

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 16, 2001

**JIMMY E. CAMPBELL v. TENNESSEE DEPARTMENT OF
CORRECTION**

**Appeal from the Chancery Court for Davidson County
No. 00-3463-III Ellen Hobbs Lyle, Chancellor**

No. M2001-00507-COA-R3-CV - Filed April 19, 2002

This appeal involves a dispute between a prisoner and the Tennessee Department of Correction regarding the calculation of sentence reduction credits. The prisoner, believing that he has a right to have his sentence calculated “according to the least onerous method,” filed suit in the Chancery Court for Davidson County seeking to require the Department to calculate his sentence reduction credits using the pre-1985 sentence credit statutes. The trial court dismissed the prisoner’s petition after concluding that it lacked subject matter jurisdiction because the prisoner had failed to allege in his petition that he had exhausted his administrative remedies as required by Tenn. Code Ann. § 4-5-225(b) (1998). We have determined that the prisoner’s petition should have been dismissed, not for lack of subject matter jurisdiction but because it fails to state a claim upon which relief can be granted. Accordingly, we affirm the judgment dismissing the prisoner’s complaint.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Jimmy E. Campbell, Only, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Stephanie R. Reeves, Associate Deputy Attorney General, for the appellee, Tennessee Department of Correction.

OPINION

I.

Jimmy E. Campbell kidnaped and then murdered his victim on July 31, 1986. On January 12, 1987, he plead guilty to second-degree murder and aggravated kidnaping, both Class X offenses, and the Circuit Court for Haywood County sentenced him to consecutive sentences of thirty and twenty years. Within a month’s time, Mr. Campbell had second thoughts about his guilty plea and

filed a pro se petition for post-conviction relief seeking to set his convictions aside because of ineffective assistance of counsel, violation of his privilege against self-incrimination, and involuntariness of his guilty plea. This effort was rebuffed by the Circuit Court for Haywood County and by the Tennessee Court of Criminal Appeals.¹

On November 7, 2000, Mr. Campbell filed a pro se complaint against the Tennessee Department of Correction in the Chancery Court for Davidson County seeking declaratory and injunctive relief regarding the manner in which the Department was calculating his sentence reduction credits. While his complaint, like most pro se complaints, is poorly drafted and difficult to understand, it appears that Mr. Campbell was asserting that, after the repeal of the Class X Felonies Act of 1979,² he was entitled to earn sentence reduction credits in accordance with the pre-1985 sentence credit statutes.

The Office of the Attorney General eventually filed a motion to dismiss Mr. Campbell's complaint containing broad assertions that the complaint failed to state a claim upon which relief can be granted and that the trial court lacked jurisdiction.³ While the basis for the Attorney General's motion was not readily apparent in the motion itself, it must have been Mr. Campbell's failure to allege that he had exhausted his administrative remedies within the Department. By virtue of Tenn. Code Ann. § 4-5-225(b), exhaustion of remedies is a necessary precondition to filing a petition for declaratory judgment under Tenn. Code Ann. § 4-5-225(a). Mr. Campbell responded to the motion by asserting that he was not seeking a declaratory judgment under Tenn. Code Ann. § 4-5-225(a) but rather injunctive relief for which exhaustion was not a precondition. The trial court filed a memorandum and order on January 18, 2001, concluding that Mr. Campbell's complaint was, in substance, a petition for a declaratory judgment under Tenn. Code Ann. § 4-5-225(a) and, therefore, that it "does not have jurisdiction in this matter" because "[n]either the complaint nor the opposition to the motion to dismiss asserts that the petitioner has first sought a declaratory order from the Department of Correction." Mr. Campbell has appealed from the dismissal of his complaint. We have determined that Mr. Campbell's complaint should have been dismissed, but not on the grounds relied upon by either the Attorney General or the trial court.

II.

¹*Campbell v. State*, Haywood County No. 1, 1988 WL 23573 (Tenn. Crim. App. Mar. 16, 1988), *perm. app. denied* (Tenn. July 5, 1988).

²The Class X Felonies Act of 1979 was repealed by the Criminal Sentencing Act of 1989.

³Tenn. R. Civ. P. 7.02(1) requires that motions "state with particularity the grounds therefor." The motion in this case refers to a memorandum of law accompanying its motion. However, this memorandum, by operation of Tenn. R. App. P. 24(a), is not a part of the appellate record. Suffice it to say that articulating a defense in a memorandum accompanying a motion does not amount to compliance with Tenn. R. Civ. P. 7.02(1). *Hickman v. Tennessee Bd. of Paroles*, ___ S.W.3d ___, ___, 2001 WL 1222259, at *1, n. 2 (Tenn. Ct. App. Oct. 16, 2001); *Pendleton v. Mills*, ___ S.W.3d ___, ___, 2001 WL 1089503, at *2, n. 7 (Tenn. Ct. App. 2001); *Robinson v. Clement*, 65 S.W.3d 632, 635 n.2 (Tenn. Ct. App. 2001).

The responses of the Office of the Attorney General to prisoner lawsuits, either those seeking a declaratory judgment or those seeking a common-law writ of certiorari, have fallen into a predicable pattern. One of the standard weapons in the Attorney General's arsenal is the assertion that the trial court somehow lacks subject matter jurisdiction over the prisoner's claim. We have repeatedly pointed out the flaw in this argument by reminding the Attorney General of the difference between circumstances in which the trial court lacks subject matter jurisdiction and those in which the plaintiff has failed to allege facts warranting the exercise of the trial court's jurisdiction. *Totty v. Tennessee Dep't of Correction*, No. 01A01-9504-CV-00139, 1995 WL 700205, at *1-2 (Tenn. Ct. App. Nov. 29, 1995) (No Tenn. R. App. P. 11 application filed); *Fox v. Tennessee Bd. of Paroles*, No. 01A01-9506-CH-00263, 1995 WL 681135, at *1-2 (Tenn. Ct. App. Nov. 17, 1995) (No Tenn. R. App. P. 11 application filed).⁴ This case presents yet another example of the Attorney General's remarkable determination to assert this "lack of subject matter jurisdiction" defense in circumstances where it is not warranted.

The concept of subject matter jurisdiction involves a court's power to adjudicate a particular controversy brought before it. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *Turpin v. Conner Bros. Excavating Co.*, 761 S.W.2d 296, 297 (Tenn. 1988); *First Am. Trust Co. v. Franklin-Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001). Courts derive their subject matter jurisdiction exclusively from the Constitution of Tennessee or from legislative act, *Meighan v. U.S. Sprint Communications Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977), and cannot exercise jurisdictional powers that have not been conferred directly on them expressly or by necessary implication. *Dishmon v. Shelby State Cmty. College*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999). Accordingly, neither the actions nor inactions of the parties can confer subject matter jurisdiction on a court. *State ex rel. Dep't of Social Servs. v. Wright*, 736 S.W.2d 84, 85 n.2 (Tenn. 1987); *Caton v. Pic-Walsh Freight Co.*, 211 Tenn. 334, 338, 364 S.W.2d 931, 933 (1963).

Tenn. Code Ann. § 4-5-225(a) clearly gives the Chancery Court of Davidson County subject matter jurisdiction over suits for declaratory judgment. Thus, any argument that the trial court somehow lacks subject matter jurisdiction over these suits is misplaced. Tenn. Code Ann. § 4-5-225(b)'s exhaustion requirement does not affect the court's subject matter jurisdiction conferred in Tenn. Code Ann. § 4-5-225(a). Rather, it is a requirement that persons seeking a declaratory judgment must satisfy before the trial court will consider exercising its subject matter jurisdiction. *Wilson v. Sentence Information Servs.*, No. M1998-00939-COA-R3-CV, 2001 WL 422966, at *3 (Tenn. Ct. App. April 26, 2001) (No Tenn. R. App. P. 11 application filed); *Watson v. Tennessee Dep't of Corr.*, 970 S.W.2d 494, 497 (Tenn. Ct. App. 1998). Thus, persons who fail to allege that they have exhausted their statutorily required administrative remedies have failed to state a claim upon which relief can be granted. They have not divested the court of the jurisdiction expressly conferred by Tenn. Code Ann. § 4-5-225(a).

⁴In both cases we pointed out that the trial court, contrary to the Attorney General's assertions, clearly had subject matter jurisdiction to entertain petitions for common-law writs of certiorari but that the prisoners had not articulated a claim requiring the trial court to exercise its jurisdiction.

III.

We have examined the record and, like the trial court, have concluded that Mr. Campbell has not alleged that he has requested the Department to provide a declaratory order regarding his right to earn and accrue sentence reduction credits using the pre-1985 sentence credit statutes. Accordingly, Mr. Campbell has failed to state a claim upon which relief can be granted.

We have also determined that this appeal should not end here. Were we to base our decision solely on the short-comings of Mr. Campbell's complaint, there would be nothing to prevent him from demanding the Department to render a declaratory order under Tenn. Code Ann. § 4-5-224 and then from filing this lawsuit again after the Department declines to render a declaratory order. There is a more basic reason for concluding that Mr. Campbell has failed to state a claim upon which relief can be granted. Taking the factual allegations in Mr. Campbell's complaint as true, Mr. Campbell is not entitled, as a matter of law, to have his sentence reduction credits calculated using the pre-1985 sentence credit statutes.

Under the Class X Felonies Act of 1979, as originally enacted, persons convicted of Class X crimes were not entitled to sentence reduction credits of any sort. This restriction was eased in 1985 when the General Assembly, responding to the pressures of prison overcrowding, determined that prisoners convicted of Class X crimes could begin earning sentence reduction credits under the new program contained in the Tennessee Comprehensive Correction Improvement Act of 1985.⁵ Of particular relevance to this case is Tenn. Code Ann. § 41-21-236(c)(2) which states that "[a]ny provision of titles 39 and 40 to the contrary notwithstanding, persons who commit class X felonies on or after December 11, 1985, shall be eligible for the sentence reduction credits authorized by this section."⁶

By virtue of Tenn. Code Ann. § 41-21-236(c)(2), prisoners who committed their crimes on or after December 11, 1985, were eligible to earn sentence reduction credits under Tenn. Code Ann. § 41-21-236, not under any of the previously enacted sentence credit statutes. Mr. Campbell, by his own admission, committed his crimes on July 31, 1986. Accordingly, his opportunity to earn sentence reduction credits is controlled by Tenn. Code Ann. § 41-21-236 alone. *Laney v. Campbell*, 1997 WL 401829, at *2 (holding that a prisoner's right to earn and accrue sentence reduction credits rests solely on the rules and criteria contained in the statutes authorizing the credits). Because Mr. Campbell's criminal offenses occurred after December 11, 1985, his assertion that he is somehow

⁵ Act of Dec. 11, 1985, ch. 5, § 12(c)(2), (3), 1985 Tenn. Pub. Acts (1st Extra. Sess.) 22, 25, codified at Tenn. Code Ann. § 41-21-236 (1997).

⁶ Tenn. Code Ann. § 41-21-236(c)(3) also provides that prisoners who committed Class X crimes prior to December 11, 1985, would be prospectively eligible to earn sentence reduction credits under the 1985 program if they signed a written waiver. *Laney v. Campbell*, No. 01A01-9703-CH-00142, 1997 WL 401829, at *2 (Tenn. Ct. App. July 18, 1997), *perm app. denied* (Tenn. Nov. 24, 1997); *Henderson v. Lutche*, 938 S.W.2d 428, 430 (Tenn. Ct. App. 1996).

entitled to earn and accrue sentence credits according to the pre-1985 sentence credit statutes fails to state a claim upon which relief can be granted to him.

IV.

We affirm the dismissal of Mr. Campbell's complaint on grounds different from those relied upon by the trial court⁷ and remand the case to the trial court for whatever further proceedings may be required. We tax the costs of this appeal to Jimmy E. Campbell for which execution, if necessary, may issue. We also find that Mr. Campbell's complaint and subsequent appeal are frivolous in accordance with Tenn. Code Ann. § 41-21-807(c) (Supp. 2001) and Tenn. Code Ann. § 41-21-816(a)(1) (1997).

WILLIAM C. KOCH, JR., JUDGE

⁷The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial court when the trial court reached the correct result. *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999); *Allen v. National Bank of Newport*, 839 S.W.2d 763, 765 (Tenn. Ct. App. 1992); *Clark v. Metropolitan Gov't*, 827 S.W.2d 312, 317 (Tenn. Ct. App. 1991).